

REMARKS

Claim Amendments

Claim 8 has been cancelled.

The Examiner has indicated that Claims 6 and 9 are allowable if rewritten in independent format including all limitations of the base claims and any intervening claims.

Following the Examiner's recommendation, Applicant submits New Claims 10 and 11 are Claims 6 and 9, respectfully, rewritten in independent format including all limitations of the base claims and any intervening claims.

Applicant does not adopt nor admit Examiner's reason's for the indication of allowable subject matter. It is significant that the point contact that would be supplied by the free end of Applicant's integral lever arm alone, without the addition of the actuator ring, may serve as an actuator member although the ring facilitates placement of the cooking utensil.

Affidavit of George Steven Hampton

Applicant respectfully asserts that the Examiner has failed to consider the main thrust of George Steven Hampton's affidavit filed with the previous amendment. The affidavit set forth the reasons for the inoperability of the Jones, et al. reference, US Pat. No. 5,809,990.

Affidavits or declarations attacking the operability of a patent cited as a reference must rebut the presumption of operability by a preponderance of the evidence. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980); MPEP 716.07. Applicant

respectfully submits that the remarks of this amendment, in conjunction with the explanations and test results contained in the affidavit, meet this burden. The explanations, along with common sense, lead to the conclusions established as a result of the experiment reported in the Hampton affidavit.

For the Jones device to operate, the vertical rod 109 is required to pass freely through a guide 105, wherein the lower end of the vertical rod 109 engages one end of lever arm 110. See Col. 2, lines 33-35. The affidavit sets forth that upon use, the guide 105 does not allow vertical rod 109 to pass freely so that lever arm 110 may continue to actuate the valve.

Specifically, the affidavit details the inevitable results of the position of guide 105 and vertical rod 109 directly beneath the burner, causing the guide 105 to become quickly fouled with burnt grease and food matter to the point at which the vertical rod 109 cannot freely pass through the guide 105 to actuate lever arm 110. Moreover, the mere fact that the lower end of the vertical rod 109 must engage and move in respect to the end of the lever arm 110 invites binding of the rod 109 in the guide 105, especially in the burnt grease filled environment where tests have shown that such binding does in fact occur, resulting in inoperability of the structure of the Jones reference.

Where the affidavit or declaration presented asserts that the reference relied upon is inoperative, the claims represented by Applicant must distinguish from the alleged inoperative reference disclosure. In re Crosby, 157 F.2d 198, 71 USPQ 73 (CCPA 1946); MPEP 716.07. The position of the guide 105 and vertical rod 109 directly beneath the burner, when combined with the requirement that rod 109 pass freely through guide 105 to actuate lever arm 110, are significant structural and operational limitations that not

only render the device functionally inoperable, but more importantly, fully distinguish Jones from the Applicant's claimed invention. Specifically, Applicant claims an integral valve actuating arm (B) extending laterally beneath the burner which activates the valve (A). See Applicant's Claim 1.

In contrast, the Jones reference discloses a dual action armature means consisting of vertical rod 109 and guide 105, a combination which renders the device functionally inoperable and structurally distinguishes Jones. See Jones Claim 1; See also Col. 2, lines 33-35.

Thus the Jones patent is directed to an inoperable device, and cannot anticipate the Applicant's claimed operable and structurally distinguished invention under 35 USC §102(b).

Claim Rejections Under 35 USC §102

Claims 1, 3-5, and 7 stand rejected under 35 USC 102(b) as being anticipated by Jones, et al. (US Pat. No. 5,809,990).

The Examiner contends that both of Jones' spring loaded plungers 111 and 311 are located adjacent to the pivot points 112 and 312. Likewise, Examiner further avers that the pivot point 112 is adjacent the end of the actuator arm contacting the valve 115, the Examiner specifically citing the depictions in Figure 1 and Figure 3 of the Jones reference.

Applicant respectfully disagrees with both conclusions. Neither Jones' Figure 1 nor Figure 3 is properly scaled, and it is not always the case that the spring loaded plungers are located adjacent to the pivot points and that the pivot point will be closer to the valve end.

As Col. 2, line 66 to Col. 3, lines 1-3 disclose, the geometry of the device, namely the required length of travel of the plunger 111 and the vertical rod 109 dictate the position of the pivot point 112 on actuator arm 110 relative to the valve 115. This forces a dual result: pivot point 112 may be forced to move away from the valve end of the actuator arm, and likewise, the pivot point may be forced away from the spring loaded plungers.

In contrast, applicant's pivot point position is not dictated by the plunger and vertical rod geometry. In fact, Applicant's device does not use a vertical rod.

In addition, the Examiner avers that Applicant's actuator arm (E) is structurally equivalent to the vertical rod 109 and 309 disclosed in Jones. Applicant respectfully disagrees.

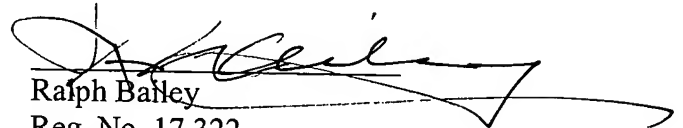
Applicant's Actuator arm (E) is not structurally equivalent to the vertical rod 109 disclosed in Jones. Jones' vertical rod 109 is required to pass freely through a guide 105, wherein the lower end of vertical rod 109 engages one end of lever arm 110 which in turn actuates valve 115. See Col. 2, lines 33-35.

Applicant's actuator arm (E) is not a vertical rod, but rather comprises a single unitary structure for receiving the entire cooking utensil on one end when placed on the burner. See Fig.1; See also Applicant's Specification Page 5; See also Applicant's Claim 1.

The device of the Jones reference, however, requires the use of a vertical rod (109 and 309). See Col. 2, line 34; Col. 2, line 35; Col. 4, line 60; Col. 4, line 62. Thus, there can be no structural equivalence between these two very different structures.

Accordingly, it is respectfully submitted that the above application is in condition
for allowance, and such action is respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Ralph Bailey', is written over a horizontal line.

Ralph Bailey

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